

**REDACTED  
VERSION OF  
EXHIBIT 5**

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June 13, 2024

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**VIA E-MAIL**

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RE: *Authors Guild, David Baldacci, Mary Bly, et al. v. OpenAI et al.*, No. 1:23-cv-8292 & *Alter, Bird, Branch, et al. v. OpenAI et al.*, No. 1:23-cv-10211: Microsoft's May 17 Document Production

Dear Microsoft Counsel:

We write in response to your June 4, 2024 letter regarding various discovery related issues.

**"Training" Related Discovery**

Plaintiffs seek documents that relate—in a variety of ways—to the training of OpenAI's LLMs. For example, RFP Nos. 17-18 request documents relating to "the use of commercial works of [fiction/non-fiction] to train" OpenAI's LLMs. Such material is directly relevant to core factual questions of this litigation—*e.g.*, whether OpenAI used commercial works to train its LLMs and what Microsoft knew about the training and when. .

In response to Plaintiffs' requests, Microsoft asserted the general objection that it "will not search for or produce documents" if it interprets the request to "imply, suggest and/or assume that Microsoft trained or otherwise developed OpenAI's models." *Microsoft's Responses to Plaintiffs' First Set of RFPs* at 5-6. Reiterating this objection, Microsoft indicated that it will not search for documents responsive to RFP Nos. 17-18; 21-25; 27-29; 39-40. This objection is improper and does not supply a valid basis (*e.g.* relevance, burden, proportionality) for refusing Plaintiffs' requests.

Nevertheless, in your June 4 letter, you confirmed that Microsoft is standing on its objections and will not search for documents responsive to these RFPs. You also stated that you are "not aware of any non-privileged document, already produced or not" responsive to these RFPs. It is hard to understand the import of this representation, given that Microsoft has not searched for any of these documents.

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To the extent Plaintiffs have misunderstood Microsoft's agreements/efforts to date regarding RFP Nos. 17-18; 21-25; 27-29; 39-40, we are willing to further confer. However, to the extent Microsoft maintains its refusal to search for relevant material responsive to these requests—because *inter alia* the requests “imply” Microsoft developed OpenAI's LLMs—the parties are at an impasse.

Please let us know by **June 20, 2024** whether this issue warrants further conferral. Otherwise, Plaintiffs will proceed formally.<sup>1</sup>

### **Custodial Documents**

Plaintiffs can agree to a mutual exchange of proposed search terms, custodians, and corresponding hit report (for a subset of Plaintiffs' custodial documents) as soon as **June 14, 2024**.

### **Metadata in Documents Produced on May 17**

Custodial or not, Plaintiffs are entitled to documents as they are maintained in the regular course of business. We understand your representation that “no metadata has been omitted from these documents” to mean that the documents that listed “Microsoft” were produced as they are kept by Microsoft, without any intermediate change in custodial information from [individual custodian] to “Microsoft.” Please confirm that understanding is correct.

We look forward to hearing from you.

Sincerely,



Reilly T. Stoier

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